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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

NO. .....

PEOPLE OF MICHIGAN,
Plaintiff-Appellee,

v.

WILLIAM STAFFORD, SR.,
Defendant-Appellant,
In Proper Person.

In Re: *Lower Court No. 18407*
Michigan Court of Appeals: *9401*
Michigan Supreme Court: *52980-1/2*

APPEAL TO THE UNITED STATES SUPREME COURT FROM A FINAL JUDGMENT RENDERED BY THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

CITATIONS TO OPINIONS BELOW

The judgment of the Michigan Supreme Court of Michigan is unreported and is presented in Appendix "A" attached hereto.

Other prior judgments on Appeal in this cause and likewise unreported are also included as appendices hereto.

After denial of the usual post-trial motion for new trial on the day of April 9, 1962 by Circuit Judge John W. Baker, Appeals follow:

a) Michigan Supreme Court #50381-1/2: denial entered June 3, 1963 (Appendix B, p. 27).

b) Michigan Court of Appeals #1228. Remanded to L.C. November 19, 1965 (Appendix C, p. 28).

c) L.C. upheld former decision Confession Voluntary December 20, 1965.

d) Michigan Court of Appeals upholds L.C. entered on July 18, 1966. #1800 (Appendix D, p. 30).

e) Petition for habeas corpus dismissed by Judge Fred Kaess of the Federal District Court Eastern District of Michigan entry #29442, Dec. 1/67 (Appendix E, p. 32).

f) Motion for new trial made in Genesee County Circuit Court, Judge John W. Baker, denied, entered on April 30, 1968 (Appendix F, p. 33).

g) Appeal of April 30, 1968 denial filed in Michigan Court of Appeals on May 22, 1968, and rejected without comment on May 27, 1968 (Appendix G, p. 34).

h) Appeal again made to the Supreme Court of Michigan. Entry of denial #52152-1/2 made on November 1, 1968.

i) Petition for habeas corpus again presented to the Federal District Court, Eastern District of Michigan with denial made on May 1, 1969, entry #32264 with reason given "State Remedies Not Exhausted" (Appendix H, p. 35).

j) Appeal of habeas corpus denial #32264 in the 6th Circuit Court of Appeals was denied, entry #19,736 was made on March 3, 1970, Upholding the District Court ruling of State Remedies not exhausted (Appendix I, p. 33).

k) Another Appeal was taken to the Michigan Court of Appeals, A denial #9401 was entered July 21, 1970 (Appendix J, p. 39).

l) Appeal of the Court of Appeals ruling in #9401 was taken in the Michigan Supreme Court where denial was made #52980-1/2 entry Oct. 27, 1970 (Appendix K, p. 41).

GROUNDS

Jurisdiction is invoked of the United States Supreme Court because of the failure of the State Courts of Michigan to confront and rule upon the several abuses of constitutional guarantees of the rights of the accused to a fair trial as alleged by the appellant and supported by proof to sustain.

Efforts on Appeal as shown by the wearisome multiplicity of the citations given, shows that Appeal measures in Michigan Courts are not "State Remedies" but a nit-picking morass of self-imposed technicalities designed to thwart rather than give relief as merit demands.

Appellant further believes that denial of a review by a State Court on the Constitutional issues involved is sufficient cause for a review on Appeal by the Supreme Court of the United States.

Appellant seeks Appeal under provisions of 28 U.S.C. Section 1257, and believes that 28 U.S.C. Sections 2103 and 2104 may also apply.

Appeal is sought on the judgment rendered by the Supreme Court and entered on October 27, 1970.

CASES RELIED UPON TO SUSTAIN JURISDICTION

Uveges v. Pennsylvania, 335 U.S. 437
McNabb v. United States, 318 U.S. 332
Mallory v. United States, 354 U.S. 449
Draper v. Washington, 372 U.S. 487
Gideon v. Wainwright, 372 U.S. 335
Faye v. Noia, 372 U.S. 391
Haynes v. Washington, 373 U.S. 503
Hamilton v. Alabama, 368 U.S. 52
Jackson v. Denno, 378 U.S. 376
Spano v. New York, 360 U.S. 315
Pointer v. Texas, 380 U.S. 400
Powell v. Alabama, 287 U.S. 45
White v. Maryland, 373 U.S. 59
Crawford v. Beto, 383 F.2d 604

VIOLATION OF FEDERAL STATUTES CITED IN SUPPORT OF JURISDICTION:

1) Federal Social Security Act, Section 207, Title II
2) Veterans Administration Rules and Regulations, Ch. 53, Sec. 3101, Title 38, at page 7219

The above named Federal Statutes were violated when the defendant, a veteran of World War I, and retired worker under Social Security was under duress, compelled to assign his pension benefits accruing in future payments under above statutes in order to pay the fee of a lawyer summarily appointed by the Court, and in which the defendant had no choice of lawyers given him.

SECTION 207, TITLE II, OF THE SOCIAL SECURITY ACT PROVIDES:

> "That the right of any person to any future payment under Title II of the Social Security Act shall not be transferable or assignable at law or in equity. Further, any money paid or payable or rights existing under the law shall not be subject to execution, levy, attachment, garnishment, or other legal process. The only exception made is that a levy for collecting delinquent Federal taxes may be made."

VETERANS RIGHTS LAWS AND REGULATIONS: CH. 53, SEC. 3101, TITLE 38, Page 7219, PROVIDES:

> "That payments of benefits due or to become due under any law administered by the Veterans Administration shall not be assignable or transferable except to the extent authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from claim of creditors, and shall not be liable to levy, or seizure by or under any legal process whatever, either before or after receipt by beneficiary."

QUESTIONS PRESENTED ON APPEAL

A) Was the defendant's right against self-incrimination as guaranteed by the Fifth Amendment violated when he was arrested by police when he was in an intoxicated condition and immediately subjected to prolonged, coercive interrogation while mentally incapable of contending for his right to a lawyer, or to remain silent if he wished?

B) Was the right of the defendant to representation by counsel as set forth in the Fourteenth Amendment

violated WHEN he was taken into the Flint City Court 24 hours after arrest, charged with murder, and had demanded a preliminary hearing and a Court-appointed lawyer to represent him, and was denied the lawyer although a hearing was given?

Further, was defendant's right to a fair trial jeopardized by a news item in the local paper of same day in which an account of the appearance in Court was given with the additional comment that the defendant had confessed the crime "according to the police"?

C) Was defendant deprived of his constitutional rights and due process of law WHEN compelled to go into a preliminary hearing without the representation by a lawyer; denied the right to represent self; denied the right to confront and cross-examine witnesses against him; denied the right to testify, or produce witnesses in his behalf?

D) Was defendant prejudicially deprived of adequate counsel at his coming trial WHEN, after two weeks of harassed effort to obtain a lawyer of his choice, and appearing in Circuit Court for arraignment for trial with the judge summarily appointing counsel, but only after defendant was pressed into agreeing to assign his federal pension checks accruing in future payments to pay his Court-appointed lawyer with such assignment a violation of Federal Statutes? Further, defendant was not allowed a choice in the appointment with the end result of being saddled with an inept, bungling, unethical lawyer who proved unfit to represent defendant in any capacity.

E) Was defendant's right to a fair trial further abused WHEN his lawyer knowingly permitted defendant to be deprived of an essential witness at the trial while

allowing the prosecutor to call a hostile witness who could find no sanction under law, and with the palpable intent to place defendant in a position of self-incrimination?

With the news media in reports of proceedings at the trial continuing to inform the public and the jury that defendant had previously confessed to the crime . . . "According to the police."

F) Have defendant-appellant's efforts on appeal been stymied by the overt prejudice existing in the comity chain of Michigan Courts because of an initial Application for Leave to Appeal filed in the Supreme Court of Michigan by appellant's former lawyer on April 25, 1963?

The Application was known to have been fraudulently conceived, and illegally executed, BECAUSE: Appellant had fired his lawyer 45 days prior to date of filing; had notified the Clerk of the Michigan Supreme Court of the fact, and requested said Clerk to not accept for the record anything that might be presented on said Appeal by appellant's former counsel, Jerome D. Winegarden.

G) Was the prejudice of the Michigan Courts further aroused WHEN a civil suit #4042 was filed in the Genesee County Michigan Circuit Court on November 20, 1964, in which the appellant as plaintiff, sued his former lawyer for return of all money paid him, and for which no acceptable service was rendered because of unethical conduct. Thereafter, requests for legal aid on Appeal were denied by the Court and personal efforts of appellant to provide his own counsel, were fruitless.

ON APPEAL: The lower Courts do not answer the questions presented.

APPELLANT: Says the answer should be YES to all questions.

CONCISE STATEMENT OF THE CASE

On Sunday morning, November 5, 1961 at around 11 o'clock, Mrs. Elaine Bencko called at the home of a neighbor, William Stafford, a 68 year old retired Chevrolet worker living alone at his home at 727 Fenton Rd., City of Flint, Michigan. Mrs. Bencko said she wanted to borrow his car.

Failing to get response to her knocks and calls at the front door, Mrs. Bencko then went to the rear door and repeated her knocking and calling without response. She then entered the house through the partly open rear door. She found her neighbor on a sofa in the living room apparently asleep. She tried to arouse him by shaking him and calling his name but failed to arouse him. Then preparing to leave via the front door and looked through the open door of an adjoining bedroom as she left, she saw a man and a woman lying on the bedroom floor. Resuming her effort to arouse the sleeper on the sofa without result, Mrs. Bencko became alarmed and called the police. Officers Savagaue and Storms responded in about 10 minutes. Also, at about the same time, William Stafford, Jr., a son of the appellant and was at the time, a Genessee County Deputy Sheriff and member of the Flint Township police department. The appellant had at the time showed a tendency to arouse himself, with the son trying to converse with him but getting no lucid replies.

At this time the officers put in a call to homicide for Lieut. Burke and Sergeant Thorpe and upon their arrival William Stafford, Jr. was sent from the room while Mrs. Bencko was allowed to remain. The available record is in conflict as to what actually transpired after younger Stafford left the room at the order of Lieut. Burke.

The record reveals that appellant was taken to police headquarters at 12:00 noon, and at 12:15 was subjected to prolonged interrogation during the afternoon until culminating in what police claimed to be a voluntary confession, when later evidence at the trial was such that the appellant was in no condition to assert his right to a lawyer, or to remain silent, if indeed he had been told of such rights by police.

APPEARANCE IN MUNICIPAL COURT:

Twenty-four hours later, on November 6th, 1961, appellant appeared before Judge Donald Freeman in City Court on a charge of murder. Appellant had never been in Court charged with crime before, so he took the advice of a fellow prisoner who advised him to "not enter a plea until advised by a lawyer; to demand a preliminary trial; to demand that the Court appoint counsel for the hearing."

Appellant did as instructed with the judge granting a hearing, but telling appellant "You'll get a lawyer after you're bound to Circuit Court. I remand you back to jail to await your hearing on November 15, 1961," whereupon appellant remained incommunicado during the nine days before said hearing. No transcript of proceedings was made available to appellant because Mrs. Deane Williams, Court Reporter, states that she was not present and there is no record of the pertinent dialog between a judge and a man charged with murder. However, another reporter

of the vilest sort was present. The same afternoon, the Flint Journal carried a blow by blow description of what purported to be the crime with the added statement, "According to the police."

INCOMMUNICADO STATUS:

Cornelia Stafford, wife of appellant states by affidavit that she tried to contact the appellant during the first week of his confinement in jail, in person, and by telephone, the officials at the jail telling her "no one is allowed to contact your husband." Likewise, Elzie Sullivan, a cousin of appellant, came from his home in Detroit to Flint, and as he states in his affidavit, "to render whatever aid he could to appellant, including trying to help with his lawyer problem."

Mrs. Stafford further states that on or about November 10, 1961 she sent attorney Bob Grimes, a Flint attorney, to the County Jail to find why her husband was held incommunicado. Attorney Grimes prevailed with the Sheriff, and visiting privileges were granted to her but she did not get to contact her husband until after the preliminary was held.

APPEARANCE ON A SECOND INDICTMENT:

On November 13, 1961, appellant appeared before Judge Freeman in Municipal Court on a second murder charge. The first one a week earlier the charge was for the murder of one William Howard, case #18408. Then came the second indictment on above date of November 13, 1961, was for the murder of one Barbara Mancour and assigned case #18407. This appearance being a blueprint of the first appearance with the appellant refusing to plead, and his request for a lawyer again denied him. As previously, no transcript is available on the second appearance.

AT THE PRELIMINARY HEARING ON NOVEMBER 15, 1961:

The 52-page transcript shows that the appellant, then the defendant at the time on a charge of murder, appeared in Court without a lawyer and requested to waive examination until he could get a lawyer and indicated that he did want an examination after he got a lawyer. The judge would not grant the request, saying, "That the people are entitled to a hearing if they desire and that is their wish at this time." There were no eye witnesses to the alleged crime and the witnesses against the accused were the four officers concerned with the arrest and Lieut. George Edwards of homicide who was the interrogator. The only incriminating evidence produced was what was purported to be a voluntary confession.

At the beginning of the hearing the defendant-appellant abruptly was admonished by City Judge Freeman thusly, "I do not think it to your advantage to conduct a cross-examination." And again, after the state had completed its testimony, Judge Freeman gave the accused another gem of advice. "This would be the time for you to present testimony in your behalf, but I don't think it would be to your benefit." The accused regarded such as orders inasmuch as Lieut. Edwards had told him in the beginning, "You will sit quiet, just like a bump on a log. You have made a statement to us, and you won't make another." The hearing ended with the statement "Bound to Circuit Court, date of arraignment November 20th."

At the above hearing it also developed that the accused was the victim of continued interrogation after he had appeared on the first charge on November 6th, and again after the second appearance on November 13th, the facts as admitted by Lieutenant Edwards at the preliminary.

Incommunicado status, and so-called voluntary confessions are the bugaboo of justice and go together like ham and eggs.

In *Uveges v. Pennsylvania*, 335 U.S. 437, the Court held that:

> "The holding of any person incommunicado counsel or parents is an insidious method of intimidation and tends to render a person plastic to police assertiveness and demands a trial of mental endurance under unlawful pressure."

McNabb v. United States, 318 U.S. 332:

> "*The record leaves no doubt that the questioning took place while in custody of the arresting officers and before any order of commitment was made.* Plainly *a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand* without making the Courts themselves *accomplices to wilful disobedience* to the law." [Emphasis added.]

Mallory v. United States, 354 U.S. 449:

> "The accused was not told of his rights to counsel or to a preliminary hearing examination before a magistrate nor was he told that he could keep silent or warned that anything he said could be used against him. *Not until after he had confessed was an attempt made to take him before a magistrate until the next day.*
>
> "The arrested person may be booked by police *but he is not to be taken to the police headquarters in order to carry out a process of inquiry that lends itself to geting support for the arrest and ultimately of his guilt.*" (See also, *Upshaw v. U.S.*)

Gideon v. Wainwright, 372 U.S. 332:

> "Asserted denial of due process is to be tested by an appraisal of the totality of the facts involved in a given case, that which may in one setting constitute a denial of fundamental fairness.
>
> "One of the facts at issue; representation by counsel it seems clear in the case of Gideon v. Wainwright that the accused must have a lawyer when requested and that he must not have one in name only, he must have assistance."

In *Hamilton v. Alabama*, 368 U.S. 368 at pages 54-55, the Court held:

> "Whatever may be the function and importance of arraignment in other jurisdictions, we have already said enough to show that in Alabama it is a critical stage in a criminal proceeding. Whatever happens here may affect the whole trial. Available defenses may be as irretrievably lost, if not asserted then and there as they are when an accused represented by an attorney waives the right for strategic purposes."

White v. Maryland, 373 U.S. 59, said the Court:

> "We repeat what we said in Hamilton v. Ala., supra, p. 55, that we do not stop to determine whether prejudice resulted: Only the presence of counsel could have enabled the accused to plead intelligently."

Pointer v. Texas, 380 U.S. 400. Again the right to counsel and to cross-examine witnesses was upheld when the Court said:

> "We hold in this case as we held in Hamilton v. Alabama and White v. Maryland. 'Such rights are fundamental and essential to a fair trial and long established in Fed-

eral Court and under provisions of the Fourteenth Amendment, extended to the States.'"

See also *Powell v. Ala.*, 287 U.S. 45, and *Spano v. New York*, 360 U.S. 315.

ARRAIGNMENT FOR TRIAL IN CIRCUIT COURT

The first attempt at arraignment of defendant for trial was before the Hon. Donn Parker in the Genesee County Circuit Court on November 20, 1961, at which time the defendant-appellant gave a concise statement of his financial condition to-wit: Social Security $119.00; World War I soldiers pension $75.00; G.M.C. retirement $29.63; all pensions accruing in future monthly payments. Also, defendant stated that he was trying to retain Robert Grimes as defense attorney but had not completed the arrangements. Proceedings were adjourned for one week with the Judge saying that he would look into some statements made by the defendant.

At the next appearance one week later on November 27th, the Judge was impatient because defendant had not hired a lawyer. Whereupon, the prospective lawyer was called into court and stated to the Judge why the defendant had not been able to get his own lawyer. The lawyer, Bob Grimes, stated that he expected to get his fee from joint owned property, but the wife of the defendant with lifetime occupancy of the property had said that she would not sell or mortgage same in order to pay a lawyer's fee. Grimes further told the judge "I just don't see how Mr. Stafford can pay a lawyer."

The two weeks harassment was a needless imposition because the Judge himself had on the preceding month of October 9, 1961, presided in a suit for separate maintenance between the defendant and wife and was thoroughly

cognizant with defendant's finances. The Judge had made the home joint property with lifetime occupancy to the wife who was also awarded the amount of $65.00 monthly sustenance.

As Lawyer Grimes was leaving the room, Judge Parker summarily appointed attorney Jerome Winegarden as defendant's counsel at the coming trial. In a journal entry of said date, the Judge stated that the Court had found the defendant poor, and unable to pay his lawyer.

In the afternoon of said date, the Court-appointed lawyer, Winegarden, called on the defendant at the County Jail with a petition for him to sign in which the assets, including his future pension checks be assigned to the Friend of the Court to pay his court-appointed lawyer. The petition made no provision for paying the $65.00 monthly to defendant's wife and he refused to sign it. Whereupon, lawyer Winegarden left, but returned the next day, November 28th, with a petition which provided for paying the $65.00 monthly as formerly decreed, and with the admonition by Lawyer Winegarden, "The Judge said sign it, or you get no lawyer."

Defendant signed the petition with his lawyer administering the oath in the capacity of a notary public, and signed the jurat. The petition becoming a nullity under Michigan Statute Section 601.77, Volume 4 of the Compiled Laws of Michigan (1948):

> "It shall not be lawful for notaries public who are also attorneys and counselors at law to administer oaths in causes in which they may be personally engaged."

At this time defendant asked his court-appointed attorney to get a new preliminary hearing for him as he had indicated he would want at the former hearing. His lawyer

replied, "We could likely get it, but it won't do any good because your confession has hurt you."

DEPRIVED OF ESSENTIAL WITNESS AT TRIAL

About two weeks before the trial began on March 12, 1962, attorney Winegarden approached Cornelia Stafford, wife of defendant, and told her that two expert witnesses were needed at the trial, and unless she would pay their fees, her husband would be without their help. He stated that the State of Michigan should pay the witnesses, but had refused to do so. Under such duress, the wife agreed. The witnesses were to be Dr. Sid Conover, a specialist in alcoholism who had treated the defendant on four different occasions for alcoholism, and a psychiatrist, Dr. Jerome Fink, who was to testify on the effect of alcohol on human behavior. Defendant's lawyer did not contest the so-called voluntary confession, but entered a plea of temporary insanity induced by excessive drinking of alcoholic beverages.

Dr. Fink called at the Genesee County jail on Saturday, March 3, 1962 for the purpose of consultation and examination of defendant, but was denied his request "because it's visitors day" and he was told to come back later. Dr. Fink had other commitments and couldn't return before the trial, and notified Attorney Winegarden of the fact and for him to get another doctor. Then came Lawyer Winegarden informing both the defendant and wife that he could not get a local doctor in lieu of Dr. Fink, and the short time before trial did not allow getting an outside witness.

In the evening of March 15, 1962, a man called at the jail and identified himself to defendant as Dr. Raymond Jaarsma, a local psychiatrist, and that he had been sent to the jail by the prosecutor to examine the defendant. The defendant had previously been denied a like witness

in his behalf, and refused to grant Dr. Jaarsma's request. At the time the trial was in progress and the defense had rested its case. Yet, on November 20, 1962, the prosecutor called Dr. Jaarsma for a witness. The only testimony given by the doctor was that he had been sent to the jail by the prosecutor to examine the defendant who had refused to grant his request. Defense attorney, Winegarden, offered no objection to the witness, despite the fact that a Court Order as required by law, had not been issued for the said examination.

Michigan Court Rule #311 provides that a Court Order must issue:

> "The order for examination must be made upon good cause shown and upon notice to the person examined and to all parties, and shall specify the time, place, manner and scope of the examination, the person or persons by whom it is to be made, and shall provide that the attorney for the person examined may be present."

Callaghans Pleadings and Practice states the Law: VOL. 5, SECT. 37.108:

> "Information obtained through compulsory and non-voluntary examination has been held not disclosable and might well be regarded as a violation of principles excluding evidence illegally obtained, or as an invasion of the privilege against self-incrimination of the person examined."

TESTIMONY AT THE TRIAL

No eyewitnesses to the alleged crime were produced. The People based their charge on what purported to be a voluntary confession given to the police. A confession

the defendant was not allowed to challenge at his preliminary trial, and was not challenged by his lawyer at the trial. Officers Savageau, Storms, Thorpe, and Burke, who made the arrest, testified that they had questioned defendant in his home before taking him to headquarters and that he had admitted his guilt to them.

Sergeant Szabo and Lieut. Edwards of homicide testified that the defendant was subjected to four periods of interrogation immediately following his arrest, finally culminating in what was claimed to be a voluntary confession of guilt. Some of the officers testified that they could smell alcohol on the breath of the defendant, while others said he looked as if he might have had something to drink, etc., but all said that he appeared lucid enough for interrogation.

WITNESSES FOR THE DEFENSE;- Nine in number, established the fact that the defendant was a heavy drinker of intoxicating liquor and was seen under its effects almost daily. That they had observed him just prior to, and after, the alleged crime, and his actions indicated that he was under the influence of alcohol to a noticeable degree.

Ernest Harrison, a filling station attendant testified that the defendant bought a battery for his car at about 11 o'clock in the morning of Saturday, November 4, 1961, and while installing the battery he could smell alcohol on defendant's breath, and he appeared to be under the influence of liquor to a marked degree.

Floyd Kerry, owner of a garage near defendant's home testified that at 1 o'clock p.m. on said day he was engaged to repair the generator on defendant's car, and the defendant left he said "to get more whiskey." Mr. Kerry also testified that upon defendant's return to get his car in the late afternoon, he appeared too drunk to drive his car

home, but refused to allow Kerry to drive him home as he wanted to do for the safety of defendant and others.

Carney Hammond, a neighbor of defendant, hearing about the drunken condition, came to the defendant's home about 7:30 of the said day, and found him in such condition that he tried to get him to spend the night at his (Hammond's) home. The defendant would not agree, and Mr. Hammond returned to his home around 8 p.m. after getting a promise from defendant that he would not attempt to drive his car that night.

Mrs. Carrie Jenkins, a barmaid in Bob's Bar, located on Court Street in Flint, near the defendant's home, testified that defendant came into the bar around 8:30 or 9:00 o'clock on said Saturday night, and asked to be served a drink of whiskey, which she refused to do, telling the defendant, "You have enough to drink already." Whereupon defendant and William Howard left the bar shortly afterward with the statement by defendant, "I'll go where I can get something to drink." The defendant and William Howard returned to Bob's Bar between 1:30 and 2:00 o'clock then Sunday morning, November 5th, which was close to the time the murder was alleged to be committed. Mrs. Jenkins testified that at that time she saw no change in defendant's condition and again refused to serve him whiskey as she had also done some four hours earlier. In his testimony Ernest Harrison had also seen the defendant at 7:30 on Sunday morning which was after the alleged crime, and the defendant, ordinarily a good driver, was handling his car so erratically that Mr. Harrison's conclusion was that the defendant was drunk.

Material Witness, Elaine Bencko, who had discovered the dead people and called the police was called to testify at the trial on March 13, 1962. In her morning testimony

she testified that she was unable to get the defendant awake, but after he had aroused himself, she said he told police that he shot the people. When cross-examined she stated that the defendant upon waking up, appeared to be in a fog or something. At her appearance again in the afternoon of said day, Mrs. Bencko was pressed more closely about defendant's condition at the time the police appeared and she stated "HE WAS DRUNK."

William Stafford, Jr., present at the time police took the defendant from his home testified also that he was drunk.

Paul Gay, and his wife Lucy, next door neighbors of defendant, were both observers of the defendant when the police took him from his home, and both testified that the defendant appeared to be noticeably affected by alcohol.

UNETHICAL CONDUCT OF DEFENDANT'S LAWYER ON APPEAL:

The unethical and inefficient conduct of defendant's lawyer manifest at the trial continued in post-trial procedures. The last of the impositions on the defendant by a Court order of November 28, 1961 when on April 6, 1962 he tendered his three pension checks for said month to his attorney, Winegarden, the total amount of said checks, $223.76. Although bound by said court order to deposit the checks in custody of the Friend of the Court, he did not do so. Instead, the canceled checks show that Lawyer Winegarden personally endorsed and accepted payment from the Citizens Bank of Flint, Michigan, with the record of the Friend of the Court showing that the money was not paid for credit, and $142.00 of defendant's obligations payment of which was sanctioned by said Court order, remained unpaid.

On April 16, 1962, defendant left for Jackson prison to begin his term of life imprisonment. On said day, he was approached by his lawyer Winegarden who said "Your only remedy now is to appeal to the State Supreme Court which will not take over three or four months at most. In the meantime you can send me your Social Security check each month until the appeal is acted upon."

The defendant started making monthly payments of $115.00 in May of 1962, and continuing through October 1962. In the meantime, receiving false and misleading information on progress of the appeal.

On October 28, 1962, defendant enclosed a letter with his check to his lawyer Winegarden, asking him for a concise report on the appeal. No answer was made to the letter. One month later, on November 29, 1962, another letter was sent to Lawyer Winegarden, in which the request for pertinent information was again made. Defendant received an immediate answer telling him that his appeal had already been sent to the Court about three weeks ago, and defendant would be notified when the Court had made a ruling.

After waiting for more than three months without further information, defendant wrote a letter of inquiry to the Clerk of the Michigan Supreme Court. The letter dated February 13, 1963 asked about the status of the appeal. On February 19, 1963, Clerk Donald Winters of said Court informed defendant that nothing pertaining to his case had been filed. Whereupon, defendant writes a letter to his lawyer, Winegarden, firing him, and another letter to Clerk Winters notifying him of the fact, and requested that he not accept anything for the record which Lawyer Winegarden might present on said appeal. Defendant then contacted Attorney Robert Grimes, a Flint attorney,

asking him to investigate the matter. On April 17, 1963, Attorney Grimes reported by letter to the defendant that he had contacted Clerk Donald Winters in regard to the appeal, and Clerk Winters had informed that there had been nothing filed. It was then that defendant's lawyer, Winegarden, got busy and presented an Application for Leave to Appeal that was accepted by Clerk Winters and entered on the record April 25, 1963.

The record shows that the appeal began with an extension of time granted May 2, 1962, a second extension of time granted May 28, 1962. An Application for Leave to Appeal directed to the Michigan Supreme Court was filed with the Clerk of Genesee County Court on July 3, 1962 with nothing filed in the Michigan Supreme Court. On July 5th, two days after said filing, another 30-day time extension was procured in order to perfect the appeal. Another extension was procured on September 25, 1962 in order to perfect the appeal, with a Concise Statement of Facts signed by the trial judge on the said date, the Application was not filed until seven months later, when filed April 25, 1963 and was filed against the legitimate protest by the defendant who had exercised his right to fire his unethical lawyer because of his rotten ethics.

The Application for Leave to Appeal as filed in the State Supreme Court of Michigan was claimed to be a conformance copy signed by the lawyer himself as such, but found to be entirely out of context with the original filed with the Genesee County Clerk on July 3, 1962, in the important matters of dates of execution and text of the conflicting documents. No brief in support of his spurious presentation, no statute or precedents were offered by Attorney Winegarden. Yet the Supreme Court of Michigan purportedly considered the spurious document in the light of it being legal.

The defendant then began to procure such portions of the record as he was able to afford, and became aware of his lawyer's perfidy. On November 20, 1964, defendant filed a civil suit #4042 in the Circuit Court of Genesee County seeking recovery of the money paid his former lawyer, Jerome Winegarden. With the newly implemented Court of Appeals to be activated in Michigan on January 1, 1965, defendant applied to his former trial judge for legal aid in preparing a new appeal. This request was denied on December 3, 1964. Subsequent efforts made by defendant to hire his own legal counsel failed, some of the lawyers contacted were openly hostile because defendant had sued his former Court-appointed lawyer, and snidely stated that it might happen to them also.

Defendant in pro-se then filed his application to the Court of Appeals in September 1965, and the case was remanded to his trial Court on November 19, 1965 for the stated purpose of getting the defendant's version of his alleged voluntary confession, and making a separate record of same. On December 17, 1965, defendant appeared in a court in which the atmosphere reeked with hostility. He had been denied a lawyer on appeal by said Court; had appeared at the remand without a lawyer, and was not asked if he had one, or desired one to represent him.

Defendant's past experience in his court, and the absence of vital records on two previous appearances, had prompted defendant to engage a qualified Gregg Shorthand Secretary to take notes of the proceedings and stated to the judge that the miserable abuses previously perpetrated made it necessary to safeguard defendant's rights in the court. The hearing of course resulted in the judge upholding the former decision of the voluntariness of the confession, thereby giving the Court of Appeals the opportunity to uphold the decision of the lower-Court without consider-

ing the various factors of due process denials sufficient to negate any confession whether voluntary or not.

PREJUDICIAL ENMITY OF THE COURTS STILL EXISTS:

After pending for more than five years and booted around among five Circuit Judges, civil suit #4042 was finally brought to trial on May 6th, 7th and 8th, 1970. By a unanimous verdict, 12 citizens of Genesee County, Michigan, comprising the jury panel, found that defendant's former lawyer, Jerome Winegarden, had been negligent in representing his client's interests and that he should refund $937.80 of the money to his former client.

Attorney Winegarden, defendant in said suit, moved the Court for a directed verdict of no cause. His motion was denied, and in due time, defendant Winegarden moved for a new trial, with his motion also not granted. To date, eight months later, the Court has not entered judgment against Attorney Winegarden in keeping with the jury's verdict nor has the defendant in said cause, Attorney Jerome Winegarden, sought relief through the channel of appeal. The factors in said civil suit arose from the unethical representation by Lawyer Winegarden in the defendant-appellant's original trial for murder in March 1961, and his equally reprehensible conduct in a fraudulently conceived and illegally executed Application for Leave to Appeal in 1962 and 1963.

Defendant-appellant submits the above details of civil suit #4042 in support of his allegation of prejudicial enmity of the Courts of Michigan in depriving him of relief when abuses of his rights under both Common Law and Constitutional mandates are so palpably clear.

CONCLUSION

Defendant-appellant prays that the Court will grant a reversal and remand for a new trial.

Respectfully submitted,

WILLIAM STAFFORD, SR.,
#107485, Pro Per
4000 Cooper Street
Jackson, Michigan 49201

Dated: December 29, 1970

APPENDIX A

[fol. 1] JOURNAL OF THE CIRCUIT COURT
FOR THE COUNTY OF GENESEE

At a general Term of the Circuit Court for the County of Genesee, continued and held at the Court House, in the City of Flint, in said County, on Monday the 16th day of April, 1962.

Present: Hon. John W. Baker, Circuit Judge.

The Court was opened for business in due form .....

The People of the State of Michigan
vs. } #18407
William Stafford, Sr.,

William Stafford, Sr., the respondent in this cause, represented by Jerome Winegarden, having been by the verdict of the Jury convicted of the crime of Murder-1st degree, as appears by the record thereof, and having been by the Prosecuting Attorney brought to the bar of the Court for sentence and having there been asked by the Court if he had anything to say why judgment should not be pronounced against him, and having said what he had to say;

Therefore, it is Ordered and Adjudged by the Court now here that said respondent be confined in the Michigan Corrections Commission at the State Prison of Southern Michigan, at Jackson, Michigan under the provisions of the Michigan Code of Criminal procedure and the Michigan Penal Code for a period of the balance of his natural life in Solitary Confinement at hard labor, from and after this date.

APPENDIX B

[fol. 1] AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 3rd day of June in the year of our Lord one thousand nine hundred and sixty-three.

Present the Honorable

LELAND W. CARR,
Chief Justice,
JOHN R. DETHMERS,
HARRY F. KELLY,
EUGENE F. BLACK,
THOMAS M. KAVANAGH,
THEODORE SOURIS,
OTIS M. SMITH,
MICHAEL D. O'HARA,
Associate Justices.

The People of the State of Michigan,
Plaintiff,

vs. #18407

William Stafford,
Defendant.

In this cause an application is filed by defendant for leave to appeal from an order of the Genesee circuit court and an answer in opposition thereto having been filed by plaintiff and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby DENIED.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 4th day of June in the year of our Lord one thousand nine hundred and sixty-three.

/s/ Donald F. Winters
Clerk.

APPENDIX C

[fol. 1] AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 19th day of November in the year of our Lord one thousand nine hundred and sixty-five.

Present the Honorable
Thomas Giles Kavanagh
Presiding Judge
Hon. Louis D. McGregor
Hon. Timothy C. Quinn
Judges

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs.

WILLIAM A. STAFFORD,
Defendant-Appellant.

#1228

In this cause an application for delayed appeal is filed by defendant, and an answer in opposition thereto having

been filed and due consideration thereof having been had by the Court;

IT IS ORDERED that the cause be and the same is REMANDED to the circuit court of Genesee County to assume jurisdiction and to make a determination upon a separate record of the voluntariness of the defendant's confession. At this hearing, after due notice to the prosecuting attorney, the defendant may take the stand and testify for the limited purpose of making of record of his version of the facts and circumstances under which the confession was obtained. By doing so, the defendant does not waive his right to decline to take the stand on trial in chief, if retrial is ordered, nor does he waive any of the other rights stemming from his choice not to testify.

If the trial judge, on the basis of the hearing and record made before him, determines the confession was involuntarily made, he shall enter an order granting a new trial and the defendant shall be rearraigned and required to plead anew to the information. The said order shall constitute a final judgment for purposes of review.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 19th day of November in the year of our Lord one thousand nine hundred and sixty-five.

/s/ Ronald L. Dzierbicki
Clerk

APPENDIX D

[fol. 1] AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 14th day of July in the year of our Lord one thousand nine hundred and sixty-six.

Present the Honorable

Thomas Giles Kavanagh
Presiding Judge
Louis D. McGregor
Timothy C. Quinn
Judges

People of the State of Michigan,
Plaintiff-Appellee

vs

William Stafford,
Defendant-Appellant

NO. 1800

In this cause a motion to affirm the judgment of the trial court and deny the appeal heretofore filed herein, having been filed, and it appearing to the Court from an examination of the record that the trial court found after a proper evidentiary hearing that the confession of the defendant which was admitted in evidence at the trial was voluntarily made,

IT IS ORDERED that the appeal be and the same is hereby DISMISSED and the judgment of the trial court is affirmed.

Appendix D

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby ce: ify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 18th day of July in the year of our Lord one thousand nine hundred and sixty-six.

/s/ Ronald L. Dzierbicki
Clerk

APPENDIX E

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM A. STAFFORD,
Petitioner,

vs.

GEORGE A. KROPP, WARDEN,
Respondent.

DOCKET NO. 29442

HABEAS CORPUS
PROCEEDINGS

ORDER DISMISSING HABEAS CORPUS PROCEEDINGS

At a session of said Court, held in the U.S. District Court, at Detroit, Michigan on Dec. 1, 1967.

PRESENT: HON. Fred W. Kaess
District Judge

In accordance with a Stipulation to that effect, and the Court being fully advised in the premises,

ON MOTION OF LARRY MIDDLETON,
Attorney for the Petitioner,

IT IS ORDERED, that the above entitled Habeas Corpus Proceedings be, and the same hereby are, dismissed, without prejudice.

/s/ Fred W. Kaess
DISTRICT JUDGE

APPENDIX F

[fol. 1]

PEOPLE OF THE STATE OF MICHIGAN,

VS.

WILLIAM STAFFORD, SR.,
Defendant

CASE NO. 18407
JUDGE JOHN W. BAKER

ORDER FOR DISMISSAL

At a session of said Court, held at the Court House, in the city of Flint, on this 30 day of April, A.D., 1968.

PRESENT: HONORABLE JOHN W. BAKER, CIRCUIT JUDGE

The above entitled Motion having come on for hearing,

IT IS ORDERED that said Motion be and hereby is dismissed.

JOHN W. BAKER
JOHN W. BAKER
CIRCUIT JUDGE

4-30-68

ROBERT F. LEONARD
PROSECUTING ATTORNEY
GENESEE COUNTY
FLINT, MICHIGAN
105 COURT HOUSE
BY: Earl S. Clark
/s/ Ellis S. Walters
Assistant Prosecuting Attorney

APPENDIX G

[fol. 1]

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff and Appellee, vs. WILLIAM STAFFORD, SR., Defendant and Appellant,	Court of Appeals No. ..... Lower Court No. 18407

CLAIM OF APPEAL

WILLIAM STAFFORD, SR., Defendant, claims an appeal from the Order, entered April 30, 1968, in the Circuit Court for the County of Genesee, by the Hon. John W. Baker, Circuit Judge.

/s/ William Stafford, Sr.
WILLIAM STAFFORD, SR., Defendant (107485)
In Proper Person
4000 Cooper Street
Jackson, Michigan - 49201

Copies to;-

DATED: MAY 22, 1968.

Enclosure: Check $25.00 Filing fee.

APPENDIX H

[fol. 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM STAFFORD, SR.,
Petitioner,

vs.

GEORGE A. KROPP, Warden, et al,
Respondents.

Civil No. 32264

OPINION AND ORDER DENYING PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS

At a session of said court, held in the Federal Building in the City of Detroit, *Michigan, on May 1, 1969.*

Present: The Honorable FRED W. KAESS,
United States District Judge.

Petitioner, William Stafford, Sr., is presently incarcerated in the State Prison of Southern Michigan, at Jackson, and has filed a petition for a writ of habeas corpus. Petitioner's detention is by virtue of an April 16, 1962 Genesee County Circuit Court conviction—sentence of life for the crime of first-degree murder.

Petitioner's request for relief is based upon alleged violations of his constitutional rights: (A) denial of his right against self-incrimination; (B) denial of due proc-

ess at his arraignment before the municipal judge; (C) denial of due process as a result of lack of counsel at preliminary hearing; (D) duress employed by trial court in compelling petitioner to accept court-appointed counsel; (E) deprived of witnesses in violation of rights of petitioner, as well as being placed in jeopardy by inept attor-
[fol. 2] ney; (F) denial of due process in appeal procedure by unethical attorney with sanction by the court; and (G) prejudicial enmity depriving petitioner of his right to a fair hearing of grievance.

This court, having given consideration to the pleadings, records, and files regarding this matter, finds that petitioner has never presented questions B, C, and D to the Michigan Court of Appeals, and was denied leave to appeal to the Michigan Supreme Court per order of November 1, 1968, for failure to so present those issues. In the same order petitioner was denied leave to appeal to the Michigan Supreme Court as to questions A, E, F, and G because those questions were being appealed in an untimely fashion from decisions of the Michigan Court of Appeals in 1965 and 1966.

Question A, right against self-incrimination and voluntariness of confession, was entertained by the Court of Appeals and remanded to the trial court for a determination as to the voluntariness of petitioner's confession. In January of 1966 the trial court determined the confession to have been voluntary and the Court of Appeals affirmed its decision in July of that year. As to questions E and F, going to the competency of his attorney, petitioner has failed to exhaust his remedies in Michigan's Ap-
[fol. 3] pellate Courts. Question G, prejudicial enmity of the trial judge, is without merit and based upon unsupported conclusions.

Appendix H

Title 28, U.S.C., § 2254, provides that no petition for habeas corpus may be granted by a Federal Court unless it appears that the petitioner has exhausted the remedies available to him in the state courts, or the available state remedies are not effective to protect his rights. *Fay v. Noia*, 372 U.S. 391 (1963); *Curtis v. Buchkoe*, 336 F.2d 32 (1964); *Russell v. Maxwell*, 348 F.2d 908 (1965). There appears to be no reason why this court should assume that the corrective process available to petitioner in Michigan would not be effective to protect his rights. *Whalen v. Frisbie*, 185 F.2d 607 (1950).

In order for this court to entertain petitioner's application for writ of habeas corpus he must, first, exhaust his available state remedies. He has failed to do this.

Therefore, IT IS ORDERED that petitioner's application for writ of habeas corpus is denied.

FRED W. KAESS
United States District Judge

APPENDIX I

[fol. 1]

No. 19,736

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM STAFFORD, SR.,
Petitioner-Appellant,

vs.

GEORGE A. KROPP, Warden
State Prison of Southern Michigan,
Respondent-Appellee.

PER CURIAM ORDER

(Filed March 3, 1970)

Before: PHILLIPS, McCREE and BROOKS

Petitioner appeals from the denial of his Petition for a Writ of Habeas Corpus. The District Judge dismissed petitioner's application because he found that petitioner had failed to exhaust the remedies available to him in the state courts. 28 U.S.C., Section 2254(b).

Whether available state remedies have been exhausted is a "question of fact to be determined by the trial court . . . ." *Barber vs. Page*, 355 F.2d 171, 172 (10th Cir. 1966). A review of the briefs and the record on appeal does not demonstrate that the District Judge's determination that petitioner has not exhausted available state remedies is clearly erroneous.

[fol. 2] Accordingly, the judgment of the District Court will be and it hereby is affirmed. This

determination is not a decision on the merits of petitioner's allegations and it is without prejudice to a subsequent filing of another petition upon a proper showing of the exhaustion of available state remedies. *U.S. ex rel McBride vs. Fay*, 370 F.2d 547, 549 (2d Cir. 1966).

Entered by order of the Court

/s/ Carl W. Reuss
Clerk

APPENDIX J

[fol. 1] AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 20th day of July in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable

Donald E. Holbrook
Presiding Judge
John W. Fitzgerald
Thomas M. Burns
Judges

Appendix J

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs.

WILLIAM STAFFORD,
Defendant-Appellant.

No. 9401

L.C. #18407

In this cause an application for delayed appeal is filed by defendant-appellant, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for delayed appeal be, and the same is hereby DENIED, for lack of merit in the grounds presented.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 21st day of July in the year of our Lord one thousand nine hundred and seventy.

/s/ Ronald L. Dzierbicki
Clerk

APPENDIX K

[fol. 1] AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 27th day of October in the year of our Lord one thousand nine hundred and seventy.

WM 7-90

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

WILLIAM STAFFORD,
Defendant-Appellant.

Present the Honorable
THOMAS E. BRENNAN,
Chief Justice
JOHN R. DETHMERS,
HARRY F. KELLY,
EUGENE F. BLACK,
THOMAS M. KAVANAGH,
PAUL L. ADAMS,
THOMAS G. KAVANAGH,
Associate Justices

On order of the Court, the delayed application in pro per for leave to appeal is considered, and the same is hereby DENIED, for the reasons that defendant and appellant has failed to persuade the Court that he has a meritorious basis for appeal or that the determination of the Court of Appeals was clearly erroneous.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 27th day of October in the year of our Lord one thousand nine hundred and seventy.

/s/ Donald F. Winters
Clerk.